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March 4, 1996

William F. Caton
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

RE: CC Docket 95-185; Interconnection Between Local Exchange Carriers and
Commercial Mobile Radio Service Providers

and

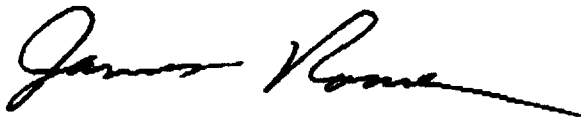
CC Docket No. 94-54; Equal Access and Interconnection Obligations Pertaining to
Commercial Mobile Radio Service Providers

Dear Mr. Caton:

The Alaska Telephone Association submits the attached comments regarding the above noted
dockets.

Thank you for your attention.

Very Truly Yours,


James Rowe

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:

**Interconnection Between Local Exchange)
Carriers and Commercial Mobile Radio Service)
Providers)**

CC Docket No. 95-185

**Equal Access and Interconnection Obligations)
Pertaining to Commercial Mobile Radio Service)
Providers)**

CC Docket No. 94-54

COMMENTS OF THE ALASKA TELEPHONE ASSOCIATION

The Alaska Telephone Association ("ATA"), an association of twenty-two local exchange companies ("LEC") in Alaska, submits these comments pursuant to the Commission's January 11, 1996, Notice of Proposed Rulemaking ("NPRM"). ATA member companies provide local exchange and other telecommunications services, including interstate and intrastate access, in Alaska.

ATA has examined the tentative policies proposed by the Commission in this matter and believes that, if adopted pursuant to this NPRM, they would negatively affect all its member companies that have interconnection agreements that Commercial Mobile Radio Service ("CMRS") providers. Further, ATA believes that the policies, proposed in the NPRM, are flawed in that they are unduly discriminatory, anti-competitive and run contrary to the Commission's goal of universal service. As such, ATA urges the Commission to terminate this NPRM and initiate a proceeding addressing all categories

of interconnection, as required by the Telecommunications Act of 1996. Further, ATA recommends that the existing interconnection agreements administered by the state regulatory commissions remain in effect, rather than adopting an interim plan, that has not been tested, as proposed in the NPRM. This approach would give Commission, industry representatives and users, the time needed to develop a comprehensive interconnection policy, as required by the Telecommunications Act of 1996, without having to suffer negative consequences of adopting a flawed interim policy.¹

BILL AND KEEP APPEARS TO BE DISCRIMINATORY

The "bill and keep" arrangement proposed in the NPRM, appears to be discriminatory in that the Commission has tentatively concluded that one set of rules should govern the recovery by LECs of access charges from Interexchange Carriers ("IXC") and another set of rules should govern LEC recovery of access charges from CMRS providers. ATA urges, however, that access is access! To set rules for one class of interconnection customers differently than another is unduly discriminatory.

Further, this kind of discriminatory treatment imposes separate and unnecessary regulation for interconnection between LECs and CMRS providers. Additional regulation is unnecessary in light of the fact that existing regulations are in place today by which LECs recover access charges for interconnection from IXCs! There is nothing wrong with applying "all" existing interstate access rate elements to CMRS providers that are currently charged IXC customers, as opposed to creating a "bill and keep"

¹ See the Telecommunications Act of 1996, Title I, Subtitle A, Part II, Section 251 concerning Interconnection.

arrangement that is, by design assured to harm the LEC. "Bill and keep" arrangements are generally appropriate when traffic charges billable to each of the parties are relatively equal. Hence, due to the offsetting charge, there is no need for one party to collect from the other party; and each party instead simply bills its own customers. However, this is rarely the case with LEC-CMRS interconnection since the majority of traffic is terminated on LEC facilities. Since the LEC recovers its costs based upon measured traffic terminated at its facilities, and further, since a majority of the traffic between the LEC and CMRS provider is terminated at the LEC, a "bill and keep" arrangement for LEC-CMRS interconnection as a practical matter assures that the LEC will not recover its costs — including its long run incremental costs.

ATA is also concerned with the Commission's tentative conclusion that LECs should charge below their Long Run Incremental Cost ("LRIC") for local switching facilities and connections to end users during the interim period proposed with NPRM². ATA members negotiated in good faith with its CMRS customers a rate to recover their costs to provide interconnection to their facilities. ATA assures the Commission that a "zero rate", as proposed within the NPRM, is below every ATA association member's LRIC cost to provide local switching and connections to end users. ATA is confident that the Commission would reject a LEC tariff that seeks to price a competitive service below its LRIC costs to an affiliate or larger customer. How then can the Commission

² See CC Docket No. 95-185, "In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers", page 13, paragraph 25, which states, "We tentatively conclude that, ... with respect to LEC-CMRS interconnection arrangements, a ... zero rate for terminating traffic should be applied with respect to local switching facilities and connections to end users during an interim period."

conclude that LECs should be required to provide interconnection with CMRS providers below its LRIC costs?

THE COMMISSION SHOULD NOT PREEMPT LEC-CMRS INTERCONNECTION

ATA believes that Commission preemption of state oversight of LEC-CMRS interconnection is not necessary. ATA is not aware of one complaint by any of its members CMRS customers about charges for access pursuant to contracts which were negotiated in good faith, and administered and reviewed by the Alaska Public Utilities Commission ("APUC"). In addition, if any CMRS provider were to ever have a complaint about its interconnection arrangement with a LEC, there are ample remedies available under the Alaska Administrative Code³.

ATA also needs to point out that at least in Alaska, and possibly in other States, most CMRS providers directly interconnect to IXCs for their toll traffic, and in doing so completely bypass the LEC. As a consequence, the practical impact of the Commission's proposals are to impose federal pricing requirements on predominantly local traffic. Under these circumstances, the Commission should recognize that it has an extremely heavy burden to show that federal preemption is permitted, let alone required, when traffic is outside its jurisdiction. Given the record of voluntarily negotiated interconnection agreements in Alaska, the Commission has not met that burden.

³ The Alaska Administrative Code sets out specific procedural steps by which parties resolve a dispute. The APUC is the enforcement agency empowered under State Law to insure compliance to whatever is ultimately adjudicated it in any dispute resolution. See Alaska Administrative Code Title 3, Chapter 48 concerning Practice and Procedure, Section 120, "INFORMAL COMPLAINTS" and Section 130, "FORMAL COMPLAINTS, PROTESTS AND INVESTIGATIONS", found on pages 499 and 500. COMMENTS OF THE ALASKA TELEPHONE ASSOCIATION
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Further, ATA believes that the Commission should reconsider its proposals concerning state preemption since these proposals were developed prior to enactment of the Telecommunications Act of 1996. Specifically, under at least two sections of the Telecommunications Act of 1996 (Section 251 – Interconnection, and Section 252 – Procedures for negotiation, arbitration, and approval of agreements) state preemption is not justified, nor permissible⁴. In fact, the language contained within Section 251 states, “... the Commission shall not preclude the enforcement of any regulation, order or policy of a State Commission”, concerning access and interconnection obligations of a LEC so long as the State Commission follows the requirements of this section. It is clear to ATA that the Telecommunications Act of 1996, with respect to interconnection oversight, empowers the State rather than the Federal Commission.

PRESENT INTERCONNECTION AGREEMENTS ARE IN THE PUBLIC INTEREST

The Commission argues that delays in resolving issues related to LEC-CMRS interconnection compensation arrangements will not be in the public interest⁵. Presumably the Commission believes that LECs may use their market power to thwart the ability of CMRS providers to interconnect, and to do so would not be in the public interest. The Commission tentatively concludes in its NPRM that the public interest is

⁴ See Title I Telecommunications Services, Subtitle A Telecommunications Services, Part II Development of Competitive Markets, Section 251 Interconnection, and Section 252 Procedures for negotiation, arbitration, and approval of agreements.

⁵ See CC Docket No. 95-185, “In the Matter of Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service providers”, paragraph 58, page 28.

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best served when CMRS providers have assurance that, within a short time frame, reasonable interconnection arrangements will be available.

ATA believes that the present interconnection arrangements in Alaska, monitored at the State Commission level, serve the public interest much more strongly than the Commission's proposal. To the best of ATA's knowledge, there has not been any significant delays by any Alaska LEC in negotiating in good faith, and obtaining APUC approval for an interconnection agreement with any CMRS provider. In fact, just recently Alaska LECs responded to two CMRS providers in Alaska whose crucial service needs such required immediate changes to their existing interconnection agreements⁶. One of the CMRS providers needed to bring on line its new digital cellular switch to meet the increasing consumer demand for cellular service. The LEC, ATU, sought APUC (interconnection agreement) approval in less time than specified by the Alaska Administrative code. The APUC took immediate action and granted ATU's request, before the CMRS provider was able to complete the installation of its switch. Another CMRS provider needed to comply with a Consent Decree with the United States Department of Justice to provide cellular equal access by a specified date. ATU again sought APUC approval to the interconnection agreement and the APUC gave the needed approval in advance of the impending deadline. In short, the current system of voluntary interconnection negotiations and APUC approval continues to work well in Alaska.

⁶ See Tariff Action numbers TA298-120 filed September 8, 1995 between ATU and MACtel, and TA299-120 filed September 26, 1995 between ATU and Cellular Alaska Partnership, a legal entity of AT&T Wireless Services, Inc.
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ATA points to a phenomenal five year average growth rate in excess of 300 percent in cellular minutes of use in Alaska. Alaska is not alone in the growth experience in this market. Nationwide, cellular subscribership has experienced a five year average annual growth rate of 47 percent⁷. It is obvious to ATA that the CMRS market is thriving and is not repressed as the Commission apparently believes.

Finally, ATA believes that the Commission's proposed policies regarding "bill and keep" would undercut the Commission's goal for universal service. As discussed above, "bill and keep" would not allow LECs to recover their just and reasonable costs to provide interconnection to CMRS providers. These costs will shift to basic service categories so that their lost revenues could be recovered. The Commission, however, apparently believes that LECs will be able to recover their costs of interconnection with CMRS providers, through revenues from vertical service⁸. LECs traditionally use revenues from vertical services to offset the costs to provide basic service, not to subsidize CMRS providers. Thus, the Commission's policies as proposed in this NPRM, appear to require service rates to subsidize a competitive service currently experiencing a phenomenal growth rate. The cross subsidization that the Commission suggests may inevitably result in upward pressure on basic service rates, thereby affecting penetration levels of basic telephone service. This is contrary to public interest and long standing universal service principles.

⁷ CTIA, *Wireless Factbook* (Spring 1995), at 7.

⁸ See CC Docket No. 93-85 and CC Docket No. 94-54, released January 25, 1996; page 25, paragraph 50.

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SUMMARY

The Commission appears, within this NPRM, to be trying to correct a problem which does not exist. In so doing, the Commission is proposing action contrary to the goals of competition and deregulation enacted by the Telecommunications Act of 1996.

ATA believes that the policies proposed by the Commission would negatively affect its member companies that have interconnection agreements with CMRS providers. Therefore, ATA encourages the Commission to terminate this NPRM and initiate a proceeding addressing all categories of interconnection, as required by the Telecommunications Act of 1996.

Respectfully submitted this 4th day of March 1996,

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